

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DALE HARVEY,

Petitioner,

v.

GARANN ROSE MEANS,

Respondent.

CASE NO. 2:23-cv-1712

ORDER ON RESPONDENT'S
SECOND MOTION TO
CONTINUE AND PETITIONER'S
MOTION TO CLARIFY

At a remote hearing on January 22, 2024, the Court heard argument on Respondent Garann Rose Means's second motion to continue the evidentiary hearing on Petitioner Dale Harvey's petition for return of their children under the Hague Convention. After thoroughly considering the motion, Harvey's response, the relevant record, and the parties' arguments, the Court DENIES Means's motion and will hold the evidentiary hearing as scheduled on January 26, 2024.

The Hague Convention expects that matters will be resolved expeditiously. *Monasky v. Taglieri*, 140 S. Ct. 719, 724 (2020). But this expectation must be balanced against the need to develop and fully consider an evidentiary record when allegations about grave harm to the children is a defense to the petition. *See Van De*

1 *Sande v. Van De Sande*, 431 F.3d 567, 572 (7th Cir. 2005). Means argues more time
2 is needed for her to obtain “psychological assessments” and “medical records.” Dkt.
3 No. 68 at 2.

4 At the hearing, the Court asked Means to make an offer of proof about the
5 records. In response, she confirmed that no psychological assessments have been
6 conducted of the children; rather, she is attempting to gather copies of her own
7 psychological assessments that document the psychological abuse she allegedly
8 suffered during her marriage to Harvey. Means also seeks medical records about an
9 evaluation of her daughter that occurred in April 2020. Means represented that the
10 medical record will show that the child had spots of blood in her underwear, but
11 Means confirms that the provider did not opine about causation. Means intends to
12 argue that this is evidence of sexual abuse and that Harvey’s explanation for the
13 blood is not medically consistent.

14 The Court finds that Means will not be prejudiced if she cannot obtain or
15 offer these records during the evidentiary hearing. To start, several courts have
16 found that spousal abuse isn’t necessarily probative of whether the children are at
17 risk of future harm. *Charalambous v. Charalambous*, 627 F.3d 462, 468-69 (1st Cir.
18 2010) (“The relevant inquiry is not whether there would be a grave risk of harm to
19 [the respondent] if she returned to Cyprus; rather, the grave risk inquiry goes to the
20 children.”). So Means’s own psychological records may be irrelevant. Regardless,
21 there are already ample psychological records in the docket speaking to Means’s
22 psychological condition. Moreover, she may testify at the hearing in her own words
23 on this score.

1 Similarly, other records can establish the existence of blood in her daughter's
2 underwear, including Means's testimony (she was present for the examination), the
3 written statement of a social worker involved in the examination, and various
4 records from the Scottish courts in which Means made similar arguments.

5 Good cause is thus absent to delay the hearing for a second time. The need to
6 handle this case expeditiously outweighs other concerns given that Means will not
7 be prejudiced in presenting her defense of grave risk to the children if they are
8 returned to Scotland.

9 At the status conference, Means also raised the possibility of the Court
10 conducting an *in camera* interview of the children about her allegations of sexual
11 abuse. Given that the Court is unequipped to conduct a forensic psychological
12 evaluation of the children, it denies Means request to conduct *in camera* interviews.
13 The Court finds an ad hoc colloquy with the children about such serious allegations
14 is more likely to cause the children harm than it is to provide any evidence to the
15 proceedings not obtainable through other means. Although this Court has a duty to
16 determine whether the facts underlying Means's grave risk defense are present, it
17 need not conduct its own *in camera* interviews of the children without help from
18 expert evaluators. *See Danaipour v. McLarey*, 286 F.3d 1, 26 (1st Cir. 2002) (finding
19 evidence of abuse provided by the treating child psychologist to be credible and
20 requiring the district court to adjudicate whether sexual abuse occurred in light of
21 the clear and substantial claim). To date, Means has neither identified nor proposed
22 such an expert.
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1 The Court also considers Harvey's motion for clarification, Dkt. No. 70. As
2 the Court explained during the hearing, the parties must exchange copies of their
3 exhibits. The Court orders the parties to send each other copies of any exhibits not
4 already provided within 24 hours of this order. The Court will decide at the hearing
5 whether to strike any untimely disclosures.

6 Accordingly, the Court DENIES Means's second motion to continue the
7 evidentiary hearing, Dkt. No. 68. In total, the Court reserves six hours for the
8 evidentiary hearing to be divided equally between the parties. The Court also
9 GRANTS in part Harvey's motion for clarification and orders the parties to
10 exchange copies of their exhibits within 24 hours.

11 Dated this 22nd day of January, 2024.

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14 Jamal N. Whitehead
15 United States District Judge
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